

**THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of	
Inventors: Rycharde Jeffery HAWKES et al.	: Confirmation No. 1504
	:
U.S. Patent Application No. 09/977,497	: Group Art Unit: 2157
	:
Filed: October 16, 2001	: Examiner: El Hadji Malick SALL
For: HELPER ENTITY FOR COMMUNICATION SESSION	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Attn: BOARD OF PATENT APPEALS AND INTERFERENCES

BRIEF ON APPEAL

Further to the Notice of Appeal filed December 22, 2006, in connection with the above-identified application on appeal, herewith is Appellant's Brief on Appeal. The \$500 statutory fee was previously paid on November 21, 2005.

To the extent necessary, Appellant hereby requests any required extension of time under 37 C.F.R. §1.136 and hereby authorizes the Commissioner to charge any required fees not otherwise provided for to Deposit Account No. 08-2025.

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Cases

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I. Real Party in Interest

The real party in interest is Hewlett-Packard Development Company, L.P., a Texas limited partnership.

II. Related Appeals and Interferences

There are no related appeals and/or interferences.

III. Status of Claims

No claims are allowed.

Claim 21 has been canceled.

Claims 1-3, 7-10 and 12-15 are rejected under 35 U.S.C. 102(e) as being unpatentable over Owen et al., USP 6,611,501. Claims 4-6, 11, 16 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Owen et al., USP 6,611,501, in view of Brown et al., USP 6,385,646.

IV. Status of Amendments

An amendment after Final Rejection was not filed.

V. Summary of Claimed Subject Matter

A method embodiment of the claimed subject matter concerns inviting an assistant entity (e.g., a customer service representative (CSR) 74) into an existing communication session (e.g., a session 11) between entities 12A, B, C over a network. (Instant specification at page 1, lines 5-9 and FIGs. 1, 23). A service system (e.g., a call-center management system 72) selects an assistant entity 74 from a group of assistant entities. The service system 72 selects the assistant entity based on context data about the existing session 11. (Instant specification at page 53, lines 24-28). The service system 72 selects the entity in response to receiving a request from a first endpoint entity (e.g., a group member as indicated in FIG. 23) already joined to the existing session 11. For example, a member of a group of friends presses an "invite CSR" button 122 to cause an HTML request to be sent to the service system. (Instant specification at page 53, lines 21-26).

The first endpoint entity is connected to the service system and requests the presence of an assistant entity in the existing session 11. The request received by the service system from the first endpoint entity directly or indirectly indicates the identity of the existing session 11 to which the entity is connected. In an embodiment, the request includes a secret session identifier for the existing session 11, along with additional context about the page currently being browsed. (Instant specification at page 53, lines 24-26). The selected assistant entity is joined to the existing session 11, e.g., "to provide advice" to a "group of friends . . . browsing the Web together and interacting." (Instant specification at page 53, lines 17-19). In this manner, an

appropriate assistant entity is selected and joined to an existing communication session.

One or more of the foregoing advantages are achieved by the present claimed subject matter as recited in the method of independent claim 1 which provides: "A method of inviting an assistant entity into an existing communication session established by a service system with an associated transport mechanism for the exchange of data across a network between endpoint entities joined to the session, comprising the steps of:

(a) selecting, by the service system, an appropriate assistant entity from a group of assistant entities taking account of context data concerning an existing session responsive to receipt of a request from a first endpoint entity already joined to the session and constituted by a party having an endpoint system connected to the network to the service system requesting the presence of an assistant entity in the session, the request directly or indirectly indicating the identity of the existing session; and

(b) joining the selected assistant entity to the existing sessions."

A service system embodiment of the claimed subject matter includes a session entity 11, a transport entity (e.g., session transport 15 and/or session transport manager 19), request-reception means (e.g., session mediation server (SMS) 67), and assistant-selection means (e.g., communication session manager (CSM) 69). The

session entity establishes communication sessions 11 and controls the joining of endpoint entities to established sessions 11. One or more entities 12 A, B, C can be added or removed as directed by a communication session manager 14. Sessions 11 are modeled in the system by appropriate data structures and method for keeping track of a current existing session and participants thereof, and effecting operations such as adding and removing participants from an existing session 11. (Instant specification at page 5, line 28 bridging over to page 6, line 6).

The transport entity 15 establishes a transport mechanism for each session 11 and effects data communication between endpoint systems corresponding to session participant entities 12 A, B, C through one or more media channels 17a, 17b, etc. (Instant specification at page 6, lines 8-15).

The request-reception means (e.g., a session mediation server 67, Instant specification at page 32, lines 9-18, page 53, line 16 through page 54, line 3, and FIGs. 3, 6, 7, and 23) receives a request from a first endpoint entity 12 A, B, C already joined to the existing communication session 11. The received request includes a request for the presence of an assistant entity (CSR 74) in the existing session 11 and directly or indirectly indicates the identity of the session. (Instant specification at page 53, lines 19-26 and FIG. 23).

The assistant-selection means (e.g., a CSM 69, Instant specification at page 31, line 30 through page 32, line 7, page 53, lines 26-30, and FIGs. 3, 6, 7, and 23) selects an appropriate assistant entity 74 from a group of possible assistant entities in

response to receipt of the request indicating the identity of an existing session 11. The assistant-selection means selects an assistant entity 74 based on the context of the existing communication session 11 and causes the joining of the selected assistant entity 74 to the existing communication session 11. (Instant specification at page 53, lines 26-30 and FIG. 23).

One or more of the foregoing advantages are achieved by the present claimed subject matter as recited in the apparatus of independent claim 17 which provides: "A service system comprising:

a session entity for establishing communication sessions and controlling the joining of endpoint entities to each such session;

a transport entity for establishing a transport mechanism for each session established by the session entity, the transport mechanism being arranged to allow the exchange of data across a network between endpoint entities joined to the session;

request-reception means operative to receive a request from a first endpoint entity already joined to a session and constituted by a party having an endpoint system connected to the network, the request being arranged for requesting the presence of an assistant entity in the session and directly or indirectly indicating the identity of the existing communication session; and

assistant-selection means arranged to be responsive to the receipt of said request by the request-reception means to select an appropriate assistant entity from

a group of possible assistant entities taking account of the context of the existing communication session, the assistant-selection means being operative to cause the session entity to join the selected assistant entity to the session.

VI. Grounds of Rejection to be Reviewed on Appeal

- A. Whether the PTO is correct in rejecting claims 1-3, 7-10 and 12-15 under 35 U.S.C. 102(e) as being unpatentable over Owen et al., USP 6,611,501.**
- B. Whether the PTO is correct in rejecting claims 4-6, 11, 16 and 20 under 35 U.S.C. 103(a) as being unpatentable over Owen et al., USP 6,611,501, in view of Brown et al., USP 6,385,646.**

VII. Argument

A. Owen et al. Does Not Anticipate Claims 1-3, 7-10 and 12-15

The rejection of claims 1-3, 7-10 and 12-15 under 35 U.S.C. §102(e) as being unpatentable over Owen et al., U.S. Patent 6,611,501 is incorrect and is hereby traversed. A rejection based on 35 U.S.C. §102 requires every element of the claim to be included in the reference, either directly or inherently. Owen fails to disclose every element of claims 1-3, 7-10, and 12-15 (and claims 17-19) for at least three reasons.

1. PTO has not applied the reference to reject claim 1

The PTO has failed to completely address claim 1 with respect to Owen, i.e., the PTO has failed to identify how Owen anticipates each element of claim 1. Other than mentioning claim 1 at page 3, line 7 of the Final Official Action mailed on September 25, 2006, the PTO fails to identify how the reference anticipates claim 1. The discussion at page 3, line 7 through page 4, line 8 is directed to the claimed service system as claimed in claim 17 and not to the method of inviting an assistant entity into an existing communication session as claimed in claim 1. The PTO is requested to clarify whether the rejection of claim 1 has been withdrawn.

2. Claim 1 is patentable over Owen

Owen fails to disclose "selecting, by the service system, an appropriate assistant entity . . . taking account of context data concerning an existing session. The PTO has failed to disclose a teaching or suggestion in Owen of, and Owen is not

believed to describe, the aforementioned limitation of claim 1.

User Agent Manager fails to select appropriate assistant entity

The User Agent Manager of Owen fails to select an appropriate assistant entity based on context data concerning an existing session. The UAM of Owen is described as performing user validation, e.g., user log on validation "Terminal Agent requesting a logon" and User Agent existence determination "User Agent requesting a query of the existence of the agent (User)" (Owen at column 28, lines 44-61). Column 27, lines 11-12 of Owen, reproduced herein for ease and convenience of reference, states as follows:

The User Agent Manager sends this message on to the relevant User Agent via its customer object.

The above portion of Owen appears to describe a portion of the logging on process of a user using a Terminal Agent to access the user's User Agent. Owen states that "[i]n order to access a service, users must associate their user agents 107 with terminal agents 102." (Owen at column 12, lines 21-23) Thus, Owen appears to describe the association of the Terminal Agent with the user's User Agent. For at least this reason, reversal of the rejection is respectfully requested.

User Agent is not an assistant entity

The User Agent of Owen cannot be an assistant entity. The User Agent is not requested, by the service system, to join an existing session. In contrast, the User Agent appears to be the mechanism through which a user requests establishment of a

service session and joins an existing service session. (Owen at column 12, lines 4-15)
For at least this reason, reversal of the rejection is respectfully requested.

UAM fails to take account of context data

Because at column 27, lines 11-12 of Owen there is no existing communication session to which the endpoint entity is joined, there can be no context data concerning an existing session on which the UAM would base a selection of an assistant entity as claimed. FIG. 11 of Owen depicts the relied-upon portion of Owen and fails to depict an existing communication session to which the endpoint entity is joined. For at least this reason, reversal of the rejection is respectfully requested.

Owen fails to join an assistant entity to an existing session

Similar to the foregoing rationale, Owen fails to disclose "joining the selected assistant entity to the existing session" as claimed in claim 1. Because there is no existing communication session to which the endpoint entity is joined during the process described at column 27, lines 11-12 of Owen, there can be no joining of an assistant entity to an existing session. For at least this reason, reversal of the rejection is respectfully requested.

For each of the foregoing reasons, the rejection of claim 1 is respectfully requested to be reversed.

Claims 2-3, 7-10, and 12-15 depend from claim 1, include further limitations, and are patentable over Owen for at least the reasons advanced above with respect to

claim 1 from which they depend. Reversal of the rejection of claims 2-3, 7-10, and 12-15 is respectfully requested.

3. Claim 17 is patentable over Owen

The User Agent Manager (UAM) of Owen is not an assistant-selection means as claimed in claim 17

The PTO asserts that Owen discloses an assistant-selection means in the form of the UAM. This is incorrect. The UAM of Owen is described as performing user validation, e.g., user log on validation "Terminal Agent requesting a logon" and User Agent existence determination "User Agent requesting a query of the existence of the agent (User)" (Owen at column 28, lines 44-61). Column 27, lines 11-12 of Owen, reproduced herein for ease and convenience of reference, states as follows:

The User Agent Manager sends this message on to the relevant User Agent via its customer object.

The above portion of Owen appears to describe a portion of the logging on process of a user using a Terminal Agent to access the user's User Agent. Owen states that "[i]n order to access a service, users must associate their user agents 107 with terminal agents 102." (Owen at column 12, lines 21-23) Thus, Owen appears to describe the association of the Terminal Agent with the user's User Agent. For at least this reason, reversal of the rejection is respectfully requested.

UAM fails to take account of context data

The PTO asserts that the UAM of Owen at column 27, lines 11-15 takes account of the context of the existing communication session as claimed in the present claimed subject matter of claim 17. This is incorrect. At the PTO-identified portion of Owen, there is no existing communication session to which the endpoint entity is joined. Because there is no existing communication session, there cannot be context data concerning an existing session on which the UAM would base a selection of an assistant entity as claimed. FIG. 11 of Owen depicts the relied-upon portion of Owen and fails to depict an existing communication session to which the endpoint entity is joined. For at least this reason, reversal of the rejection is respectfully requested.

UAM is not the assistant-selection means as claimed in claim 17

The PTO appears to assert that the service session of Owen corresponds to the claimed request-reception means of the present claimed subject matter of claim 17. (FOA at page 3, lines 14-18)

Based on the foregoing assertion regarding the service session of Owen corresponding to the request-reception means, UAM of Owen cannot be the assistant-selection means as claimed in the present claimed subject matter of claim 17. As claimed, the assistant-selection means is "responsive to the receipt of said request by the request-reception means to select an appropriate assistant entity . . . [and is] operative to cause the session entity to join the selected assistant entity to the session." Owen fails to disclose the UAM as being responsive to reception by the

service session (nor the User Agent) to select an appropriate assistant entity nor does Owen disclose the UAM as being responsive to reception by the service session to join the selected assistant entity to the session. Owen appears to describe the UAM as validating the Callee selected by the User Agent without causing the session entity to join the selected assistant entity to the session. (Owen at column 27, line 27 through column 28, line 35 and FIG. 12) For example, Owen appears to depict in FIG. 12, no interaction between UAM (UAMAN) and a session (sess) or User Agent (UA) after the validation of the Callee at step 5. Therefore, Owen fails to disclose an assistant-selection means as claimed in the present claimed subject matter of claim 17. For at least this reason, reversal of the rejection is respectfully requested.

No basis for "inherency" assertion

The PTO asserts in the FOA at page 12, lines 11-12 that the User Agent of Owen is "inherently" selected from a group of possible entities or User Agents. The PTO is reminded that the fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. In re Rijckaert, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993); In re Oelrich, 666 F.2d 578, 581-82, 212 U.S.P.Q. 323, 326 (C.C.P.A. 1981). To establish inherency, extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference and that it would be so recognized by persons of ordinary skill in the art. Inherency may not be established by possibilities or probabilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient. In re Roberston, 169

F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). In relying upon a theory of inherency, the PTO must provide a basis in fact or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the prior art. Ex parte Levy, 17 U.S.P.Q.2d 1461, 1464 (B.P.A.I. 1990). Because the PTO has not provided a rationale or evidence to show that an appropriate User Agent is selected from a group of possible assistant entities, the rejection of claim 17 based on Owen is incorrect and respectfully requested to be reversed.

Claim 17 is patentable over Owen for at least reasons similar to those advanced above with respect to claim 1. For at least this reason, reversal of the rejection of claim 17 is respectfully requested.

For each of the foregoing reasons, the rejection of claim 17 is respectfully requested to be reversed.

Claims 18-20 depend from claim 17, include further limitations, and are patentable over Owen for at least the reasons advanced above with respect to claim 17 from which they depend. Reversal of the rejection of claims 18-20 is respectfully requested.

Further, Appellants note that because the PTO has failed to accurately identify with any degree of particularity where, and to which elements of the reference, the Owen reference supposedly discloses each limitation of the present claimed subject

matter, Appellants have encountered difficulty in assisting in the determination of patentability. For example, Appellants fail to understand the leap from the Official Action of February 23, 2007 wherein the PTO asserted the following:

column 12, lines 4-15, Owen discloses each user has a user agent 107 representing and acting on behalf of the user. An "appropriate" user agent receives requests from users to establish service sessions; abstract

to the present FOA wherein the PTO now asserts:

Column 27, lines 11-12, Owen discloses a User Agent Manager sending a message on to the relevant User Agent via its customer object. Examiner construes the assistant-selection means as the User Agent Manager.

Appellants request the PTO to identify, preferably by reference number and/or element name, to which pieces of the reference the PTO believes the claimed limitation corresponds.

B. Owen et al. and Brown et al. Do Not Anticipate Claims 4-6, 11, 16 and 20

The rejection of claims 4-6, 11, 16 and 20 under 35 U.S.C. §103(a) as being unpatentable over Owen in view of Brown is hereby traversed. Claims 4-6, 11, 16, and 20 are patentable over Owen for at least the reasons advanced above with respect to claims 1 and 17, respectively, as described above. Because Brown fails to disclose at least "selecting, by the service system, an appropriate assistant entity from a group of assistant entities taking account of context data concerning an existing session responsive to receipt of a request from a first endpoint entity, where the first endpoint entity is already joined to the session, and constituted by a party having an endpoint system connected to the network, to the service system requesting the presence of an assistant entity in the session, the request directly or indirectly indicating the identity of the existing session" and "assistant-selection means arranged to be responsive to the receipt of said request by the request-reception means to select an appropriate assistant entity from a group of possible assistant entities taking account of the context of the existing communication session, the assistant-selection means being operative to cause the session entity to join the selected assistant entity to the session," Brown fails to cure the above-noted deficiencies of Owen and the rejection is respectfully requested to be reversed.

With respect to the PTO's assertion that Appellants' arguments being "not found to be of substantial evidential value," Appellants believe that substantial evidence has been presented, in the form of numerous deficiencies in the PTO's application of Owen to the independent claims, which has not been overcome by the PTO.

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Appellants have specifically pointed out how the language of the claims patentably distinguishes them from the references.

VIII. Conclusion

For each of the extensive reasons advanced above, reversal of the rejection is in order.

Respectfully submitted,

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IX. Claims Appendix

1. A method of inviting an assistant entity into an existing communication session established by a service system with an associated transport mechanism for the exchange of data across a network between endpoint entities joined to the session comprising the steps of:

(a) selecting, by the service system, an appropriate assistant entity from a group of assistant entities taking account of context data concerning an existing session responsive to receipt of a request from a first endpoint entity, where the first endpoint entity is already joined to the session, and constituted by a party having an endpoint system connected to the network, to the service system requesting the presence of an assistant entity in the session, the request directly or indirectly indicating the identity of the existing session; and

(b) joining the selected assistant entity to the existing sessions.

2. A method according to claim 1, wherein the assistant entity is a customer service representative and associated endpoint system.

3. A method according to claim 1, wherein the assistant entity is a software-based entity with an associated knowledge base.

4. A method according to claim 1, wherein the data network is the internet, and the existing session has multiple parties connected to it through web browser functionality of associated endpoint systems, the service system providing follow-me

page-push functionality to the party endpoint systems whereby to enable co-browsing by the parties joined to the session.

5. A method according to claim 4, wherein the context of the existing communication session comprises the subject of a web page currently being jointly browsed by the parties joined to the session service.

6. A method according to claim 1, wherein in step (a) the first endpoint entity uses an active feature of a web page served by the service system to request that a assistant entity join the session.

7. A method according to claim 1, wherein the service system, in setting up a communication session, creates a service-session functional entity which in the course of joining said endpoint entity to the session, sends connection details of the transport mechanism associated with the communication session to the endpoint entity or its proxy then using the connection details to connect itself to the transport mechanism.

8. A method according to claim 7, wherein the service-session functional entity comprises a session instance with generic behaviour for adding and removing endpoint entities to the communication session and for recording the endpoint entities currently joined to the communication session, and an associated service instance with service-specific behaviour determining when the session instance is to add and remove endpoint entities.

9. A method according to claim 1, wherein the service system, in setting up a communication session, creates a service-session functional entity that comprises a session instance with generic behaviour for adding and removing endpoint entities to the communication session and for recording the endpoint entities currently joined to the communication session, and an associated service instance with service-specific behaviour determining when the session instance is to add and remove endpoint entities.

10. A method according to claim 1, wherein the transport mechanism associated with a communication session provides multiple data transfer channel, for different media types, between endpoint entities joined to the communication session.

11. A method according to claim 10, wherein the endpoint entities include web browser functionality and the service system provides functionality, and the transport mechanism provides channels, for at least two of the following:

text chat;

follow-me page-push; and

packetized voice.

12. A method according to claim 7, wherein the transport mechanism associated with a communication session provides multiple data transfer channels, for different media types, between endpoint entities joined to the communication session, the connection details passed to said endpoint entity or its proxy comprising details of

the media channels associated with the communication session, and the endpoint entity or its proxy using these details to establish corresponding media channel connections to the transport mechanism.

13. A method according to claim 7, wherein the state of connection of said endpoint entity to the transport mechanism is signaled to the session-service functional entity by leg messages passed between a leg controller of the endpoint entity or its proxy and a corresponding leg controller of the service-session functional entity.

14. A method according to claim 7, wherein the second endpoint entity or its proxy already has connection functionality for joining and participating in a communication session, the service-session functional entity of the communication session to which the endpoint entity is to be joined inviting this entity into the session by sending said connection details to the connection functionality of the entity or its proxy.

15. A method according to claim 7, wherein the service-session functional entity, in joining the first endpoint entity into the communication session, sends the latter both connection functionality for joining and participating in a communication session, and said connection details.

16. A method according to claim 15, wherein the connection details and functionality are sent in association with a web page served by the service system.

17. A service system comprising:

a session entity for establishing communication sessions and controlling the joining of endpoint entities to each such session;

a transport entity for establishing a transport mechanism for each session established by the session entity, the transport mechanism being arranged to allow the exchange of data across a network between endpoint entities joined to the session;

request-reception means operative to receive a request from a first endpoint entity already joined to a session and constituted by a party having an endpoint system connected to the network, the request being arranged for requesting the presence of an assistant entity in the session and directly or indirectly indicating the identity of the existing communication session; and

assistant-selection means arranged to be responsive to the receipt of said request by the request-reception means to select an appropriate assistant entity from a group of possible assistant entities taking account of the context of the existing communication session, the assistant-selection means being operative to cause the session entity to join the selected assistant entity to the session.

18. A service system according to claim 17, wherein the assistant entity is a customer service representative and associated endpoint system.

19. A service system according to claim 17, wherein the assistant entity is a software-based entity with an associated knowledge base.

20. A service system according to claim 17, wherein the network is the Internet and the service system being arranged for providing follow-me page-push functionality to the party endpoint systems whereby to enable co-browsing by the parties joined to the session.

X. Evidence Appendix

None.

XI. Related Proceedings Appendix

None.